

**STATE OF KANSAS**  
**DEPARTMENT OF CORRECTIONS**  
**NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS**  
**AND**  
**REVOCATION OF ADMINISTRATIVE REGULATIONS**

A public hearing will be conducted at 9:00 a.m., January 25, 2012, in the Department of Corrections Main Conference Room, 4<sup>th</sup> Floor, Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas, to consider the adoption of certain proposed new regulations, certain permanent amendments to certain Kansas Department of Corrections administrative regulations, and finally, the revocation of certain Kansas Parole Board regulations.

The regulations proposed for permanent amendments are as follows: K.A.R. 44-5-115, 44-9-101, and 44-9-105.

The new regulations proposed are as follows: K.A.R. 44-9-107, 55-9-501, 44-9-502, 44-9-503, and 44-9-504.

At the same hearing, the proposed revocation of certain Kansas Parole Board regulations will also be considered, as follows: K.A.R. 45-100-1; 45-500-1; 45-500-2; 45-500-3; and 45-500-4.

This 60-day notice constitutes a public comment period for the purpose of receiving written public comments on the proposed amendments, new permanent regulations, and revocations.

All interested parties may submit written comments prior to the hearing to Linden G. Appel, Chief Legal Counsel, Kansas Department of Corrections, 4<sup>th</sup> Floor, Landon

State Office Building, 900 S.W. Jackson, Topeka, Kansas, 66612-1284. All interested parties will be given a reasonable opportunity at the hearing to present their views orally on the adoption of the proposed amendments and new permanent regulations. In order to give all parties an opportunity to express their views, it may be necessary to request each participant to limit oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed amendments, new regulations, and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Linden Appel at (785) 296-4508 or [TDD (785) 296-8443], or (785) 296-0014, FAX, or by e-mail at [LindenA@doc.ks.gov](mailto:LindenA@doc.ks.gov)

Handicapped parking is located on the south end of Landon State Office Building, and the north entrance to the building, which is the public access entrance, is accessible to individuals with disabilities.

The amendments are proposed for adoption on a permanent basis. A summary of the proposed amendments and their economic impact follows.

**K.A.R. 44-5-115. Service fees.** This regulation is amended by adding references to house arrest or participants in the house arrest program to subsections of the regulation permitting imposition of monthly supervision fees, electronic and GPS monitoring, and other supervision services, as well as DNA exemplar collections. It is further amended to permit imposition of a service fee upon inmates participating in a batterers intervention program.

It is now anticipated, as further detailed in the Department's Economic Impact Statement also made a part of this filing, that inmates and offenders placed in the house arrest program will experience an average monthly fees obligation of \$202.30, and an annual cost of \$606.90 (assuming a 3-month tenure on house arrest status).

For inmates participating in a batterers intervention program, it is now anticipated that they will experience an obligation of \$20.00 per month, and, on an annual basis, a cost of \$120.00 (assuming one completion of the entire 6-month program within a 12-month period).

**K.A.R. 44-9-101. Definitions.** This regulation is amended by adding a definition for house arrest, as well as for "postincarceration supervision," since offenders supervised on parole, conditional release, or postrelease supervision may also participate in the house arrest program as a sanction for violation of their conditions of supervision. The term "prisoner review board" is also defined, since that body will be responsible for revocations of house arrest and postincarceration supervision on and after July 1, 2011, as the successor to the Kansas Parole Board under terms of Executive Reorganization Order No. 11-34.

No economic impact on offenders, the Department, any other governmental agency or body, or private individuals in the public is now anticipated as a result of these amendments.

**K.A.R. 44-9-105. Preliminary hearing for alleged violators.** This regulation is amended by adding a reference to house arrestees as a category of supervised offender entitled to a preliminary hearing to determine if there is probable cause to believe that the offender violated one or more conditions of supervision. It is further amended to

formally provide for amendment of condition violation charges at either the pre-hearing, or mid-hearing stage of a preliminary probable cause hearing, and to require that, in the event of such amendment, the offender be given due notice and opportunity to prepare for defense of the new or amended charge, subject to the offender's waiver of that right. The hearing officer is required to expressly take note of and rule upon any such amended or new charge in the written hearing decision. The regulation is also amended to conform it to current practice in regard to the location of probable cause hearings for offenders already transported to KDOC correctional facilities pending the preliminary hearing.

No quantifiable economic impact on offenders, the Department, any other governmental agency or body, or private individuals in the public is now anticipated as a result of these amendments.

The new regulations are likewise proposed to be adopted on a permanent basis. A summary of the proposed new regulations and their economic impact follows.

**K.A.R. 44-9-107. House arrest.** This new regulation provides for detailed outline of sanctions and conditions to be imposed in the house arrest program through the issuance of an internal management policy and procedure (IMPP) issued by the Secretary of Corrections.

In addition to the impact upon inmates and offenders placed in the house arrest program as identified in the discussion of the proposed amendments to K.A.R. 44-5-115 above, it is now anticipated that the direct savings cost to the Department, for every ten (10) inmates placed on house arrest for a one-year period, will be approximately \$146,000. Please see the Department's Economic Impact Statement also made a part of this filing for more details.

**K.A.R. 44-9-501. General provisions.** This new regulation provides a summary of the general workings of a due process procedure for revocations of conditional liberty interest statuses, specifically including house arrest.

No quantifiable economic impact upon offenders, other state agencies, or private citizens is now anticipated as a result of this regulation.

**K.A.R. 44-9-502. Final revocation hearings.** This new regulation provides for a detailed due process procedure for final hearings before the KDOC Prisoner Review Board, successor to the Kansas Parole Board, in order to revoke conditional liberty interest statuses, specifically including house arrest. It requires advance written notice to the subject offender of the precise charge(s) of violation of conditions of supervision, including the evidence relied upon by the charging parole officer, for a hearing before the board without undue delay, for the rights to present evidence on one's behalf and to confront and cross-examine adverse witnesses, for a limited right to appointment of legal counsel, and to a written decision setting forth the evidence relied upon and the reasons for revocation of the conditional liberty status.

No quantifiable economic impact upon offenders, other state agencies, or private citizens is now anticipated as a result of this regulation.

**K.A.R. 44-9-503. Computation of time.** This new regulation provides for various time computations in regard to sanctions imposed in conjunction with revocation of conditional liberty statuses, including specifically house arrest. In particular, it provides for withholding of good time credit awards for inmates in the house arrest program for the review period during which the supervision condition violation(s) occurs, and also for

possible forfeiture of previously-earned good time credits, in the event that the inmate also receives a disciplinary report for the same conduct.

No quantifiable economic impact upon offenders, other state agencies, or private citizens is now anticipated as a result of this regulation.

**K.A.R. 44-9-504. Waiver of final revocation hearing.** This regulation provides a detailed set of criteria for eligibility to waive the final revocation hearing for an offender subject to revocation of a conditional liberty interest status, specifically including house arrest. Waiver of the final revocation hearing enables the offender on some form of community supervision, including house arrest, to avoid periods of “dead time” when the offender is not earning time toward service of the revocation penalty itself, and in the case of inmates under house arrest, to begin service of the remainder of the prison term upon the effective date of the waiver of hearing.

No quantifiable economic impact upon offenders, other state agencies, or private citizens is now anticipated as a result of this regulation.

At the same hearing, pursuant to the authority vested in the Department by the provisions of Executive Reorganization Order No. 11-34, effective July 1, 2011, (L. 2011, Ch. 130) the following Kansas Parole Board regulations are proposed for revocation, to wit:

K.A.R. 45-100-1; 45-500-1; 45-500-2; 45-500-3; and 45-500-4.

No quantifiable economic impact upon offenders, other state agencies, or private citizens is now anticipated as a result of these revocations.

A complete copy of the proposed permanent amendments of existing regulations, the proposed new permanent regulations, the proposed revocations, and complete

economic impact statement, may be obtained by writing to: Linden G. Appel,  
Department of Corrections, 900 S.W. Jackson, 4<sup>th</sup> Floor, Topeka, Kansas, 66612-1284,  
by calling (785) 296-4508, [TDD (785) 296-8443], 8:00 A.M. to 5:00 P.M., Monday  
through Friday, or by e-mail to: [LindenA@doc.ks.gov](mailto:LindenA@doc.ks.gov)

Ray Roberts  
Secretary of Corrections

44-5-115. Service fees. (a) Each inmate in the custody of the secretary of corrections shall be assessed a charge of one dollar each payroll period, not to exceed \$12.00 per year, as a fee for administration by the facility of the inmate's trust account. The facility shall be authorized to transfer the fee from each inmate's account from the balance existing on the first of each month. If an inmate has insufficient funds on the first of the month to cover this fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the fee. All funds received by the facility pursuant to this subsection shall be paid on a quarterly basis to the crime victims' compensation fund.

(b)(1) Each offender under the department's parole supervision, conditional release supervision, postrelease supervision, house arrest, and interstate compact parole and probation supervision in Kansas shall be assessed a supervision service fee of a maximum of \$25.00 per month. This fee shall be paid by the offenders to the department's designated collection agent or agents. Payment of the fee shall be a condition of supervision. All fees shall be paid as directed by applicable internal management policy and procedure and as instructed by the supervising parole officer.

(2) A portion of the supervision service fees collected shall be paid to the designated collection agent or agents according to the current service contract, if applicable. Twenty-five percent of the remaining amount collected shall be paid on at least a quarterly basis to the crime victims' compensation fund. The remaining balance shall be paid to the department's general fees fund for the department's purchase or lease of enhanced parole supervision services or



equipment including electronic monitoring, drug screening, and surveillance services.

(3) Indigent offenders shall be exempt from this subsection ~~of the regulation~~, as set forth by criteria established by the secretary in an internal management policy and procedure.

(4) The fees authorized by subsection (d) ~~of this regulation~~ shall not be considered a portion of the monthly supervision service fee.

(c) Each inmate in the custody of the secretary of corrections shall be assessed a fee of \$2.00 for each primary visit initiated by the inmate to an institutional sick call. A primary visit shall be the initial visit for a specific complaint or condition. Inmates shall not be charged for the following:

- (1) Medical visits initiated by medical or mental health staff;
- (2) institution intake screenings;
- (3) routinely scheduled physical examinations;
- (4) clinical service reports, including reports or evaluations requested by any service provider in connection with participation in the reentry program;
- (5) evaluations requested by the ~~Kansas parole~~ prisoner review board;
- (6) referrals to a consultant physician;
- (7) infirmary care;
- (8) emergency treatment, including initial assessments and first-aid treatment for injuries incurred during the performance of duties on a work detail or in private industry employment;
- (9) mental health group sessions;

- (10) facility-requested mental health evaluations;
- (11) follow-up visits initiated by medical staff; and
- (12) follow-up visits initiated by an inmate within 14 days of an initial visit.

No inmate shall be refused medical treatment for financial reasons. If an inmate has insufficient funds to cover the medical fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the balance of the fee.

~~(d) Each offender shall be assessed a fee for each urinalysis or other test approved by the secretary of corrections that is administered to the offender for the purpose of determining the use of illegal substances and that has a positive result. The amount of the fee shall be adjusted periodically to reflect the actual cost of administering these tests, including staff participation~~ inmate assigned to a batterers intervention program shall be assessed a fee for admission to and continued participation in the program.

(e) Each offender shall be assessed a fee for each urinalysis or other test approved by the secretary of corrections that is administered to the offender for the purpose of determining the use of illegal substances and that has a positive result. The amount of the fee shall be adjusted periodically to reflect the actual cost of administering these tests, including staff participation.

(f) Each inmate or offender shall be assessed a fee, if applicable, for the following:

- (1) Global positioning system (GPS) tracking;

- (2) electronic or any other appropriate form of monitoring;
- (3) an application for transfer under the interstate compact for adult offender supervision;
- (4) polygraph examinations;
- (5) community residential bed housing; ~~and~~
- (6) sexual abuser's treatment services; and
- (7) batterers intervention program services.

The fee for each service specified in this subsection shall be assessed only if the service is required as a part of house arrest or postincarceration release supervision.

If applicable, each offender on postincarceration release supervision or house arrest shall also be assessed a fee for the collection of specimens of blood and saliva for the purpose of providing DNA profiles to the Kansas bureau of investigation, pursuant to K.S.A. 21-2511 and amendments thereto. (Authorized by L. 2010, ch. 136, §249, as amended by L. 2011, ch. 100, §19, L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2003 2010 Supp. 75-5210, K.S.A. 75-5251, K.S.A. 75-52,139; implementing L. 2010, ch. 136, §249, as amended by L. 2011, ch. 100, §19, K.S.A. 2003 2010 Supp. 22-3717, as amended by 2004-SB-422, § 5 L. 2011, ch. 30, §136, K.S.A. 75-52,139; effective Jan. 3, 1995; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

KANSAS DEPARTMENT OF CORRECTIONS  
ECONOMIC IMPACT STATEMENT  
K.A.R. 44-5-115; 44-9-101; 44-9-105; 44-9-107;  
44-9-501; 44-9-502; 44-9-503; and 44-9-504;  
K.A.R. 45-100-1; 45-500-1; 45-500-2; 45-500-3; and 45-500-4

**I. Summary of Proposed New Regulations, Regulation Amendments, and Revocations, Including Their Purpose.**

Passage of 2011 House Substitute for SB 55, at Section 19, amending the house arrest statute (formerly, K.S.A. 21-4603b prior to its repeal by L. 2010, ch. 136, Sec. 307, effective July 1, 2010), has prompted the Kansas Department of Corrections to inaugurate a house arrest program for the first time in the Department's history. Under that statute, both inmates still serving the prison portion of their determinate sentence, as well as offenders serving parole or postrelease supervision by the Department (and also probationers supervised by court services officers placed on that status by a sentencing court) are eligible to participate in the house arrest program. The essence of the program, as its popular name suggests, is confinement in an offender's residence, subject to certain conditions of supervision.

In order to gain the maximum economic benefit to the Department as detailed below, as well as to increase operating efficiency of its facilities through somewhat decreased population, the Department proposes to adopt these new regulations and regulation amendments on both a temporary and permanent basis.

More specifically, the Department has determined that the program creates a conditional liberty interest which may not be curtailed or revoked absent due process being afforded to the subject offender, and hence, an amendment of one current regulation, and four of the new regulations (44-9-105 and 44-9-501 to 44-9-504,

respectively) deal with that subject. With the exception of K.A.R. 44-9-105, the substance of those regulations is drawn from four current Kansas Parole Board regulations in Chapter 45 of the Kansas Administrative Regulations (K.A.R. 45-500-1 to 45-500-4), which shall be simultaneously revoked, pursuant to the authority granted to the Department under Executive Reorganization Order No. 11-34, effective July 1, 2011 (L. 2011, Ch. 130).

As to K.A.R. 44-9-105 **Preliminary hearing for alleged violators**, this regulation is amended by adding a reference to house arrestees as a category of supervised offender entitled to a preliminary hearing to determine if there is probable cause to believe that the offender violated one or more conditions of supervision. It is further amended to formally provide for amendment of condition violation charges at either the pre-hearing, or mid-hearing stage of a preliminary probable cause hearing, and to require that, in the event of such amendment, the offender be given due notice and opportunity to prepare for defense of the new or amended charge, subject to the offender's waiver of that right. The hearing officer is required to expressly take note of and rule upon any such amended or new charge in the written hearing decision. The regulation is also amended to conform it to current practice in regard to the location of probable cause hearings for offenders already transported to KDOC correctional facilities pending the preliminary hearing.

As to the regulations imported from the Kansas Parole Board, in brief, the first two of these four regulations (44-9-501 and 44-9-502) provide for an inmate or offender placed on house arrest status who is proposed for revocation of that status to receive written notice of the violation(s) of program conditions of supervision charged, and after

a preliminary probable cause hearing conducted by KDOC parole officer, to receive a final revocation hearing before the Department's Prisoner Review Board, the successor of the Kansas Parole Board. The third regulation, 44-9-503, provides for computation of the inmate's or offender's remaining time to serve, in light of the fact of revocation of house arrest status, while the fourth regulation, 44-9-504, provides for a procedure for waiver of the final revocation hearing by the house arrestee.

The Department has further determined that such offenders, as in the case of both inmates in prison, and offenders under conventional postincarceration supervision, should be held accountable for at least a fraction of the actual cost of providing the supervision involved, including, among other services, payment of fees for electronic or GPS monitoring, and accordingly, pertinent amendments of the Department's general service fees regulation, K.A.R. 44-5-115, are also proposed.

Finally, it is also necessary to provide definitions of terms employed in the administration of the program, including "house arrest," and to provide for implementation of the finer details of the program's administration through eventual promulgation of a KDOC Internal Management Policy and Procedure, respectively accomplished through amendment of K.A.R. 44-9-101, and promulgation of new regulation 44-9-107.

The Department will also take this opportunity to amend K.A.R. 44-5-115 to authorize imposition of a service fee for participation in a batterers intervention program for inmates held in correctional facilities, as well as those inmates and offenders placed in the house arrest program.

In regard to the proposed revocations of certain Kansas Parole Board regulations in Chapter 45 of the Kansas Administrative Regulations, the revocations are undertaken as authorized by the provisions of Executive Reorganization Order No. 11-34, endowing the Kansas Department of Corrections and its Prisoner Review Board with all powers, authority, duties, responsibilities and prerogatives of the Kansas Parole Board, which shall cease to exist on and after July 1, 2011, when the said Prisoner Review Board shall also come into existence.

The affected Kansas Parole Board regulations—45-100-1; 45-500-1; 45-500-2; 45-500-3, and 45-500-4—have been transferred, with certain pertinent amendments proposed as set forth above, to Chapter 44 of the Kansas Administrative Regulations, which is devoted to Kansas Department of Corrections regulations, and placed in Article 9 thereof, which shall be re-titled as: “Parole, Postrelease Supervision, and House Arrest.” In order to avoid duplication and resulting confusion as to the current and binding text of administrative regulations dealing with definitions relating in general to postincarceration supervision and house arrest, and those regulations dealing with revocation of those conditional liberty interest statuses, it is necessary to revoke the parent Kansas Parole Board regulations.

## **II. Reason or Reasons the Proposed Regulations and Revocations Are Required, Including Whether or Not the Regulations are mandated by Federal Law.**

The proposed new regulations and regulation amendments, as well as the proposed revocations, are not mandated by federal law, nor are they required to participate in or implement a federally-subsidized or assisted program. The proposed

new regulations, regulation amendments, and revocations do not exceed any requirements of federal law. Instead, they are promulgated for the reasons stated in Section I above.

### **III. Anticipated Economic Impact upon the Kansas Department of Corrections.**

It is now anticipated that, for every ten (10) inmates placed on house arrest for a one-year period, the Department will realize a direct savings of approximately \$146,000. This figure is based upon the current average per diem cost for jail placements of inmates, i.e. \$40.00. Given the fact that the Department has experienced inmate populations at or slightly above system capacity for the last two fiscal years, and that the Department likely will deal with populations in that range or even larger, based on current projections, out-placement of some inmates in Kansas jails is quite likely to occur for some years to come. Hence, resort is made to average per diem cost for placements of inmates in Kansas jails as a reasonable and appropriate basis for calculation of economic impact in this instance.

The implementation of the provisions of the new regulations can be handled within the Department's existing resources. There is no impact upon the Department implicated by the proposed revocations of existing Kansas Parole Board regulations.

### **IV. Anticipated Economic Impact upon Other Governmental Agencies and upon Private Business or Individuals.**

The regulations proposed are expected to financially impact inmates and offenders placed on house arrest, by permitting imposition of fees for supervision of those placed in the program. It is estimated that inmates and offenders placed in the program will experience an average monthly fees obligation of \$202.30, consisting of the



standard monthly supervision fee of \$25.00, and a GPS fee of \$177.30 (under the current contract for provision of GPS services, the cost is \$5.91 per day per offender). On an annual basis, the obligation for these two fees is anticipated to be approximately \$606.90 (anticipating a tenure of 3 months of house arrest).

Specifically, the amendments proposed to K.A.R. 44-5-115 will have a two-fold impact. As noted above, the status of house arrest is added to those to which the monthly supervision and GPS fees apply. As a separate, independent matter, for inmates still held in correctional facilities who are participants in a batterers intervention program, they will be required to pay a service fee for same. It is estimated that inmates placed in the program will experience an average monthly fees obligation of \$20.00, and an annual obligation of \$120.00 (the latter figure is based on the facts that, currently, the program is six months in length, and as a practical matter, an inmate can not be placed in the program and serve it to full completion more than once during any 12-month period).

The regulations proposed are not expected to have a quantifiable economic impact upon the general public, private business or other governmental agencies.

**V. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection**

No less costly or intrusive alternatives to achieve the desired results were identified.